



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

DOT ORDER 3910.1C

12-28-94

DRUG AND ALCOHOL-FREE DEPARTMENTAL WORKPLACE

U.S. DEPARTMENT OF TRANSPORTATION



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Subject: **DRUG AND ALCOHOL-FREE DEPARTMENTAL WORKPLACE**

1. **PURPOSE.** This order establishes the Department of Transportation's (DOT) policy and procedures for implementing the requirements of Executive Order (E.O.) 12564, Drug-Free Federal Workplace, and the Omnibus Transportation Employee Testing Act of 1991, Public Law (Pub. L.) 102-143, Title V ("the Act").
2. **CANCELLATION.** DOT 3910.1B, Drug-Free Departmental Workplace, dated October 23, 1991.
3. **BACKGROUND.** E.O. 12564 requires that the head of each Executive agency establish a program to test for the use of illegal drugs by employees in safety- or security-sensitive positions. [The Department has had such a program in place since 1987.]

The Act requires that a program be established to test for use of alcohol or controlled substances. This program is mandated for Federal Aviation Administration (FAA) employees whose duties include responsibility for safety-sensitive functions and for any other DOT employee whose position requires a Commercial Driver's License (CDL).

The Secretary of Transportation is responsible for developing the policies, plans, and procedures for achieving the drug and alcohol-free workplace objective; one that is safe, with due consideration of the rights of the Government, the employee, and the general public.

This order merges the requirements of the Act into the program that was established to satisfy E.O. 12564, and places both of those initiatives under the Departmental Drug and Alcohol-Free Workplace Program.

4. **POLICY.** The maintenance of a safe and effective transportation system demands, in particular, that those DOT employees whose jobs involve significant responsibilities affecting public safety and national security remain totally drug-free and alcohol-free in the workplace.

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- a. It is the policy of DOT to ensure the establishment and maintenance of a drug and alcohol-free workplace required by E.O. 12564 and the Act. Emphasis is placed on the transportation mission of the Department and the potential dangers to safety posed by the illegal use of drugs and the misuse of alcohol by employees.
- b. It is DOT policy that the workplace be free from the illegal use, possession, distribution, or trafficking of controlled substances (as defined in 21 U.S.C. §802(6)). The possession and distribution of controlled substances will be dealt with in accordance with legal and administrative disciplinary procedures. Similarly, the workplace must be free from the misuse of alcohol by those individuals who perform safety-sensitive functions in accordance with the Act. The misuse of alcohol by covered employees will be dealt with in accordance with applicable disciplinary procedures. The primary goal of this policy is to ensure workplace safety.
- c. The Federal Highway Administration (FHWA) has added regulations on controlled substance (*i.e.*, drugs) and alcohol use and testing to the Federal Motor Carrier Safety Regulations to comply with the requirements of the Act. Those employees of DOT whose positions require a CDL will be subject to the FHWA testing regulations, as well as this order.
- d. Communication to all employees of the goals and objectives of a drug and alcohol-free workplace, the hazards of drug use and alcohol misuse, and the availability of aid and assistance, is the key to a successful program. It will also enable employees to recognize and deal with potential drug and alcohol problems. Equally important is the assurance to employees that their dignity and privacy will be respected.

5. REFERENCES.

a. Authorities.

- (1) Drug-Free Federal Workplace, Executive Order 12564, 51 *Federal Register* 32,889 (1986).
- (2) The Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143, Title V, 105 Stat. 952 (1991).
- (3) Section 503 of the Supplemental Appropriations Act, 1987, Pub. L. No. 100-71, Title V, 101 Stat. 468 (1987) (codified at 5 U.S.C. § 7301 note).
- (4) Section 602 of the Treasury, Postal Service and General Government Appropriations Act, 1995, Pub. L. No. 103-329, Title VI, 108 Stat. 2415, 2416 (1994).

- (5) **Mandatory Guidelines for Federal Workplace Drug Testing Programs**, effective September 1, 1994, and published at 59 *Federal Register* 29,908 (1994), issued by the Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services (HHS), establishing mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to E.O. 12564.
- (6) 49 U.S.C. §§ 353 and 1114(d) (formerly sections 5 and 6, respectively) of the Independent Safety Board Act Amendments of 1990, Pub. L. 101-641, 104 Stat. 4654 (1990), requiring that post-accident or post-incident drug testing of DOT employees be performed as soon as practicable after the accident or incident and allowing access by the National Transportation Safety Board in certain circumstances to verified positive post-accident drug test records pertaining to a DOT employee.
- (7) **Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972**, 42 U.S.C. § 290ee-1 *et seq.*, as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. § 290dd *et seq.*, Pub. L. 102-321, 106 Stat. 323 (1992) (codified at 42 U.S.C. § 201 note).
- (8) **Federal Employees' Substance Abuse Education and Treatment Act of 1986**, Pub. L. 99-570, Title VI, 100 Stat. 3207-157 (1986), requiring agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.
- (9) **Federal Employees' Health and Counseling Programs**, 5 CFR Part 792.
- (10) **Confidentiality of Alcohol and Drug Abuse Patient Records**, 42 CFR Part 2.
- (11) **Privacy Act of 1974**, as amended, 5 U.S.C. § 552a.
- (12) **Maintenance of and Access to Records Pertaining to Individuals**, 49 CFR Part 10.
- (13) **Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Routine Uses; OPM/GOVT-5 Recruiting, Examining, and Placement Records and OPM/GOVT-10 Employee Medical File System Records**, 57 *Federal Register* 35,698, 35,714, 35,722 (1992).
- (14) **Federal Property Management Regulations**, 41 CFR § 101-20.307, stating prohibitions against individuals:
 - (i) entering upon property owned or leased by the Federal government while using or possessing any illegal drugs, or

while under the influence of any illegal drugs or alcoholic beverages; or,

(ii) operating a motor vehicle while on property owned or leased by the Federal government while under the influence of any illegal drugs or alcoholic beverages.

- (15) Controlled Substances and Alcohol Use and Testing, 49 CFR Part 382, published at 59 *Federal Register* 7,484 (1994), issued by the Federal Highway Administration, contains the requirements applicable to positions requiring CDLs.

b. Guidance.

- (1) DOT Drug and Alcohol-Free Departmental Workplace Testing Guide, 1994.
- (2) Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, published at 59 *Federal Register* 7,340 (1994), issued by the Office of the Secretary, DOT, contains the technical testing procedures designed for use when testing is required pursuant to 49 CFR Part 382.

FOR THE SECRETARY OF TRANSPORTATION:



Melissa J. Allen
For the Assistant Secretary
for Administration

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CHAPTER I

GENERAL PROGRAM PROVISIONS

1. DEFINITIONS. For the purposes of this order the following definitions apply:
 - a. Air blank. A reading by an evidential breath testing device of ambient air containing no alcohol.
 - b. Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
 - c. Alcohol concentration (or content). The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this order.
 - d. Alcohol testing (or Urine Collection) site. The place designated by DOT where individuals are required to present themselves for the purpose of providing breath for alcohol testing, or urine for drug testing.
 - e. Alcohol use. The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
 - f. Breath Alcohol Technician (BAT). A person who instructs and assists individuals in the alcohol testing process and operates the evidential breath testing device.
 - g. Canceled or invalid test. In drug testing, a drug test that has been canceled by the Medical Review Officer (MRO). A canceled test is neither a positive nor a negative test. A sample that has been rejected for testing by the laboratory is treated the same as a canceled test. In alcohol testing, a test which has been declared invalid under this order. It is neither a positive nor a negative test.
 - h. Collector. A person who instructs and assists individuals in the urine collection process and who receives and makes a screening examination of the urine specimen provided by those individuals. The collector shall also initiate the chain of custody documentation and ship the urine specimen to the laboratory.
 - i. Confirmation (or Confirmatory) test. In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to assure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized

confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration, on an evidential breath testing device.

- j. Covered employee. Any DOT employee who occupies a safety- or security-sensitive position (also called Testing Designated Position (TDP)) as provided in the Appendix. Specific testing authority follows:

- (1) Drug-only TDPs. E.O. 12564 requires drug testing of safety- and security-sensitive positions throughout all OAs within DOT.
- (2) Drug and alcohol TDPs. The Act requires drug and alcohol testing for FAA employees whose duties include responsibility for safety-sensitive functions and for any other DOT employee whose position requires a Commercial Driver's License (CDL). The Act does not mandate drug and alcohol testing for other safety-sensitive employees outside FAA, or for any security-sensitive employees within DOT.
- (3) Non-TDPs. All positions that are not designated as TDPs are designated as non-TDPs. E.O. 12564 permits drug testing of employees in positions other than safety- and security-sensitive positions throughout the Federal government.

- k. Evidential breath testing device (EBT). A breath testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

- l. Not ready for duty. The status of an employee with an alcohol concentration equal to or greater than 0.02, but less than 0.04, on the confirmation test.

- m. Performing a safety-sensitive function. An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

- n. Refusal to submit to testing. An employee is considered to refuse to submit to testing if he or she:

- (1) fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for drug testing in accordance with this order;

- (2) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with this order; or,
 - (3) engages in conduct that clearly obstructs the testing process, including but not limited to, failure to report to the testing or collection site, or attempts to alter, adulterate, or substitute a urine specimen.
- o. Screening test (also called Initial test). In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath sample.
 - p. Substance Abuse Professional (SAP). A licensed physician (Medical Doctor or Doctor of Osteopathy; e.g., an FAA Flight Surgeon), or a licensed or certified psychologist, social worker, or employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with the knowledge of, and clinical experience in, the diagnosis and treatment of drug- and alcohol-related disorders.

2. RESPONSIBILITIES.

- a. Assistant Secretary for Administration. The Assistant Secretary for Administration is responsible for:
 - (1) assuring the consistent implementation of this order throughout the Department;
 - (2) establishing necessary procedures to carry out this order; and,
 - (3) designating the Department's Medical Review Officer (MRO).
- b. Heads of Operating Administrations (OAs). The Heads of OAs, including the Office of the Secretary, and the Office of the Inspector General, are responsible for implementing this order within their organizations and appointing Drug Program Coordinators (DPC) and Employee Assistance Program (EAP) managers or coordinators.
- c. Departmental Drug Office. The Employee/Labor Relations and Drug Awareness Division, Office of Personnel, Office of the Secretary (hereinafter referred to as the Departmental Drug Office, or DDO), is responsible for policy development and implementation and management of the drug and alcohol testing and awareness program for the Department. The DDO shall:

- (1) serve as principal agent in administering all contracts necessary to assure effective and efficient operation of the drug and alcohol testing program;
- (2) assure that a confidential system of records exists to properly handle and report drug and alcohol test results and retain records;
- (3) assist the MRO in performing administrative record keeping functions, including retrieving drug testing documentation provided to the MRO by the testing laboratory contractor, collection contractor (including an Aviation Medical Examiner), and DPCs, and the assimilation of other information that the MRO would require for review and determination;
- (4) monitor the current or pending status of an employee who has a verified positive drug-test result or a confirmed alcohol concentration of 0.04 or higher, and advise the MRO, SAP, or EAP manager or coordinator, as appropriate;
- (5) assure that a training program is in place to explain the requirements of this order;
- (6) maintain appropriate statistical records, including numbers of employees and applicants tested and test results, and assure that such records are free from personal identifying information; and,
- (7) assure that the Department submits the annual report on drug testing activities as required by section 503(f) of Pub. L. 100-71, codified at 5 U.S.C. § 7301 note (1987).

d. Departmental Medical Review Officer. The Departmental Medical Review Officer (MRO), in accordance with Department of Health and Human Services (HHS) criteria, is a licensed physician (Medical Doctor or Doctor of Osteopathy), responsible for receiving laboratory results generated by the agency's drug testing program. The MRO has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive result together with his or her medical history and any other relevant biomedical information. The MRO shall:

- (1) receive, review, and interpret all confirmed positive drug test results submitted to DOT from the drug testing laboratory, prior to release of verified positive test results to management officials or DPCs;
- (2) examine alternative medical explanations for a confirmed positive drug test result, including conducting employee

medical interviews, reviewing the employee's medical history, or reviewing other relevant biomedical factors and medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication;

- (3) determine if there is a legitimate medical explanation for the confirmed positive drug test result, and if so, declare that the result is consistent with legal drug use and take no further action other than reporting the test result as negative;
 - (4) determine, based on review of inspection reports, quality control data, multiple samples, and other pertinent information, if the result is scientifically insufficient for further action and, if so, cancel the test result;
 - (5) provide oversight to assure that any DOT employee required to enter into a substance abuse rehabilitation program receives appropriate treatment;
 - (6) provide guidance, direction, and oversight to Field MROs, DPCs, and EAP managers, coordinators, and service providers in areas of recognition, diagnosis, intervention, treatment, and medical practice factors in substance abuse; and,
 - (7) advise and assist management in planning and overseeing the substance abuse program.
- e. Field MROs. In the FAA, certain physicians within the field structure are designated as "Field" MROs (FMROs). FMROs may perform many of the functions of the MRO within their assigned geographical area of responsibility. This includes the examination of alternative medical explanations for the laboratory report of a confirmed positive drug test, by interview of the employee, review of medical history, and documentation of other relevant biomedical factors.
- (1) Upon completion of the above and consideration of the information obtained, the Departmental MRO is consulted and appraised of the results and recommendation. At that time the laboratory report shall be:
 - (a) verified as positive;
 - (b) downgraded to negative;
 - (c) canceled because of insufficient scientific evidence; or,
 - (d) held, pending receipt of additional information, *e.g.*, quantitative level of drug, split-specimen test, or special tests ordered by the Departmental MRO.

- (2) When the drug test report is verified, the FMRO proceeds with the notification of appropriate parties, and if rehabilitation is chosen by the employee, works with the EAP manager in the formulation of a program.
 - (3) The FMRO determines when an employee has been sufficiently rehabilitated to return to regular duties, orders the return-to-duty test, approves the aftercare program, and sets the frequency of follow-up testing.
- f. Drug Program Coordinators. The Drug Program Coordinators (DPCs) are responsible for implementing this order and managing the day-to-day operation of the drug and alcohol testing and awareness program within their OAs. DPCs shall:
- (1) serve as the principal contact with the urine collection and alcohol testing contractor(s), including Aviation Medical Examiners, to assure the effective operation of the portions of the drug and alcohol program within their OA;
 - (2) assure that supervisors and employees are notified of tests to be conducted on a random basis;
 - (3) assure that applicants for testing designated positions are identified by the personnel office and tested prior to appointment;
 - (4) arrange for reasonable suspicion, post-accident, follow-up, and voluntary testing when required;
 - (5) receive notification from the MRO or FMRO of verified positive drug test results consistent with confidentiality procedures;
 - (6) notify appropriate management officials and employees of verified positive drug test results, or alcohol misuse concentrations consistent with confidentiality procedures; and,
 - (7) implement the education and awareness portion of the drug and alcohol testing program, ensuring that:
 - (a) training and education sessions, mandatory for supervisors, are scheduled and given regarding the policies and procedures of the drug and alcohol testing program, EAP, and rehabilitation, and that a method to track participation for the DDO is established;
 - (b) films, pamphlets, and promotional materials are publicized and disseminated to employees; and,
 - (c) resources required to implement all applicable parts of the testing and awareness program are identified to the OA.

- g. Employee Assistance Managers or Coordinators. The Employee Assistance Managers or Coordinators (EAP) shall be designated by the appropriate management official to participate with the MRO or FMRO, SAP, EAP contractor personnel, and/or DPC in evaluation, diagnosis, counseling, and referral of employees. EAP managers or coordinators shall:
- (1) assist the DPC with substance abuse training provided to supervisors and with other drug and alcohol-free workplace program training and awareness activities;
 - (2) participate with the MRO or FMRO, SAP, EAP contractor personnel, and/or DPC in evaluation, diagnosis, counseling, and referral of employees to assure that an employee entering into a substance abuse rehabilitation program receives appropriate treatment;
 - (3) assist employees with substance abuse information and referral to appropriate outside treatment programs;
 - (4) obtain progress reports and discharge summaries from treatment facilities and EAP counselors and assist the MRO or FMRO, or SAP in evaluating treatment efforts and employee progress and compliance;
 - (5) assure that EAP counselors, SAPs, and treatment facilities are aware of the nature of the safety-sensitive work of DOT to assure return-to-duty recommendations are appropriately made; and,
 - (6) assist managers and supervisors in dealing with employees found to be in violation of this order or suspected of having substance abuse problems.
- h. Site Coordinators. The Site Coordinators (SCs) shall be designated by an appropriate management official to assist the collector or Breath Alcohol Technician (BAT) on the actual day of collection or testing at locations where the DPC is not present. The responsibilities of the SC shall include:
- (1) coordinating the scheduling of covered employees selected for testing with the collector or BAT, appropriate supervisor, and DPC;
 - (2) assuring that employees are selected from the random testing lists in accordance with the procedures outlined in the DOT Drug and Alcohol-Free Departmental Workplace Testing Guide;

- (3) assisting the collector or BAT with logistical arrangements; and,
 - (4) conveying the results of alcohol tests to the supervisor of the covered employee and to the DPC.
- i. Supervisor. The supervisor of a covered employee for whom a determination has been made that the employee has violated a drug or alcohol prohibition, or has engaged in other alcohol-related conduct, of this order, shall:
- (1) assure that the individual is not assigned safety-sensitive duties;
 - (2) assure that appropriate disciplinary action is taken; and,
 - (3) cooperate with recommended rehabilitation efforts of the employee.

CHAPTER II

DRUG AND ALCOHOL AWARENESS

1. DRUG AND ALCOHOL AWARENESS. The Department shall establish and maintain a program to inform employees of:
 - a. the policy prohibiting illegal drug use and alcohol misuse by DOT employees;
 - b. the adverse health, family, and community implications inherent in illegal drug use and alcohol misuse;
 - c. the impact of illegal drug use and alcohol misuse on the workplace, including the relationship between such use and performance, safety, productivity, and public confidence;
 - d. the intention to assist employees through the availability of the EAP and rehabilitation resources;
 - e. the circumstances when disciplinary action shall be required for involvement with illegal drugs or alcohol misuse;
 - f. the reliability of drug and alcohol testing;
 - g. the applicable requirements to assure confidentiality of patient records for the protection of the employee's physician-patient relationship and employee's medical history;
 - h. the Privacy Act and Supplemental Appropriations Act, 1987, protections afforded test results to assure that DOT shall not improperly disseminate information derived from drug or alcohol tests; and,
 - i. the requirement and intent that OA's submit semiannual reports on the number of employees trained, dates and locations of training, and sources of training.
2. SUPERVISORY TRAINING. All supervisors shall receive drug and alcohol awareness training. At least 60 minutes of this training shall be on the physical, behavioral, speech, and performance indicators of probable illegal drug use and alcohol misuse. This training is mandatory. Training shall also cover DOT and OA policies and procedures on substance abuse, including reasonable suspicion testing procedures, and the components of DOT's employee assistance programs, and supervisor's responsibilities to the affected employee. This training must be accomplished for current supervisors no later than one year from the date of this Order. New supervisors must complete this training no later than one year after entering the supervisory position.

OAs shall maintain records of the names of the supervisors trained, the date of the training, and the training program content. Semiannual reports of the activity shall be submitted to the DDO by each OA.

a. Additional training for CDL supervisors. All persons (*i.e.*, supervisors) designated to determine whether reasonable suspicion exists to require an employee to be tested for alcohol or drugs is required to have at least 60 minutes of training on alcohol misuse and 60 minutes of training on drug use. This training may be taken at the same time, with the total training time totaling at least 120 minutes. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and illegal drug use.

3. EMPLOYEE EDUCATION. Educational materials shall be made available to all employees which explain the requirements of the drug and alcohol program and the Department's policies and procedures. The DPC shall assure that these materials are distributed to each covered employee within their respective OA.

4. EAP TRAINING. Supervisors have a key role in establishing and maintaining a drug and alcohol-free workplace. EAPs shall provide training to assist supervisors and managers in recognizing, identifying, and addressing illegal drug use and alcohol misuse by employees. Where appropriate, union representatives shall also be provided comparable training. This training is different than the training that is the responsibility of the DPC, and must rely on the EAP and DPC to coordinate. Such supervisory EAP training shall cover the following topics:

- a. DOT policies relevant to illegal drug use, alcohol misuse, and the EAP;
- b. necessity of offering EAP services to employees, including employee's insurance constraints and limitations;
- c. importance of recognizing and documenting employee performance and behavioral changes related to illegal drug use and alcohol misuse;
- d. roles of the DDO, MRO, FMRO, DPC, substance abuse professionals, supervisors, the personnel office, and EAP personnel; and,
- e. process of reintegrating employees into the work force.

CHAPTER III

DRUG AND ALCOHOL PROHIBITIONS

1. PROHIBITED DRUG- AND ALCOHOL-RELATED CONDUCT. The following specific drug- and alcohol-related conduct by DOT employees in TDPs (i.e., covered employees) is prohibited under this order. In some cases, prohibitions also apply to employees in non-TDPs; those prohibitions are specified herein, as well.
 - a. Illegal drugs. A covered employee is prohibited from use, whether on or off duty, possession, distribution, or trafficking of controlled substances (as defined in Title 21 U.S.C. §802(6)). Employees in non-TDPs are prohibited from on-duty use, on-duty impairment, possession, distribution, or trafficking of controlled substances.
 - b. Alcohol misuse concentration. A covered employee is prohibited from reporting for duty or remaining on duty while having an alcohol concentration of 0.04 or greater on a confirmation test.
 - c. On-duty alcohol use. A covered employee is prohibited from use of alcohol while on duty. Employees in non-TDPs are prohibited from use of alcohol while on duty (as specified in 41 CFR § 101-20.307).
 - d. Pre-duty alcohol use. No covered employee shall use alcohol within four hours preceding performance of safety-sensitive functions or within such longer period as required by the OA. This includes paid or non-paid breaks during the workday.
 - e. Use of alcohol following an accident. No covered employee required to take a post-accident test for alcohol shall use alcohol within eight hours following an accident of which the employee has actual knowledge and in which management either has not completely discounted his or her involvement as a contributing factor to the cause of the accident, or has not completed a post-accident test.
 - f. Refusal to submit to a required drug or alcohol test. No employee or applicant shall refuse to submit to a drug or alcohol test required by this order.
2. DETERMINING DRUG AND ALCOHOL VIOLATIONS. The determination by management that an employee has engaged in conduct which constitutes a drug or alcohol violation of this order may be made on the basis of:
 - a. direct observation of drug or alcohol use;

- b. a criminal conviction for use, possession, distribution, or trafficking of a controlled substance;
- c. an MRO-verified positive drug test result conducted under the DOT program;
- d. a confirmed test result having an alcohol concentration of 0.04 or greater on an alcohol test conducted under the DOT program;
- e. the employee's own admission of violating a drug or alcohol prohibition by this order; or,
- f. other appropriate administrative inquiry that produces evidence of drug- or alcohol-related misconduct.

3. DISPOSITION FOLLOWING A DRUG OR ALCOHOL VIOLATION.

The Department, having actual knowledge that a covered employee has engaged in conduct prohibited by this order, shall not permit that employee to perform or continue to perform a safety- or security-sensitive function, as applicable, unless such employee has satisfied the requirements of Chapter VII, Rehabilitation. In general, DOT will offer a conditional opportunity for rehabilitation to employees committing their first violation of conduct prohibited by this order. However, this policy does not apply in all cases. DOT will seek the immediate removal from Federal service of a covered employee engaging in on-duty illegal drug or alcohol use, possession, distribution, or trafficking of illegal drugs. DOT may take action to suspend an employee indefinitely if it has reason to believe that the employee has committed a crime involving illegal drugs or alcohol misuse for which a term of imprisonment may be imposed, prior to determining a violation of this order. Specific disciplinary action, for both covered employees and non-TDPs, resulting from a drug or alcohol violation shall be handled in accordance with the provisions in Chapter IX, Disciplinary Action.

4. OTHER ALCOHOL-RELATED CONDUCT. No covered employee, tested under the provisions of this order, who is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, on a confirmation test shall perform or continue to perform safety-sensitive duties. Such an employee is considered to be "not ready for duty" by the Department. This employee shall not return to his or her safety-sensitive functions until the start of his or her next regularly scheduled shift, provided that shift occurs no sooner than eight hours after the test was conducted. A return-to-duty test is not required of an employee in this status.

CHAPTER IV

GENERAL TESTING OVERVIEW

1. **POLICY.** Section 3 of E.O. 12564 and sections 3 and 5 of the Act provide the statutory authority for all drug or alcohol testing conducted by the Department under this order. All TDPs shall be determined by the Department in accordance with the definitions of section 7(d) of E.O. 12564 and sections 3 (a) and 5 (a)(1) of the Act. A listing of TDPs is provided in the Appendix, by series and OA within the Department.
2. **TESTING OF TDPs.** TDPs within the Department are subject to either drug testing only (*i.e.*, TDPs covered only by the E.O.) or both drug and alcohol testing (*i.e.*, TDPs covered by the Act). Since the criteria contained in the Act for determining TDPs is different than the criteria that had been used in the E.O., there is no statutory authority that TDPs covered only by the E.O. be subjected to alcohol testing.
 - a. **Reasons for testing TDPs.** Any employee in a TDP is subject to the following five types of reasons-for-tests irrespective of whether that employee is eligible to be tested for drugs only, or for both drugs and alcohol. The reasons for testing an employee in a TDP are: (1) *random*, (2) *pre-employment/pre-appointment*, (3) *reasonable suspicion*, (4) *post-accident*, and (5) *return-to-duty/follow-up*. Likewise, all applicants for TDPs are subject to *pre-employment/pre-appointment* testing, as deemed appropriate for the position.
3. **TESTING OF NON-TDPs.** In limited situations, employees in a non-TDP may be subject to drug testing. Employees in a non-TDP are *not* subject to alcohol testing requirements.
 - a. **Reasons for testing non-TDPs.** The reasons for testing an employee in a non-TDP are: (1) *reasonable suspicion*, (2) *post-accident*, and (3) *follow-up*. *Voluntary* testing is also provided under this order, but is available only to non-TDPs, and is further limited only to drug testing. Employees in a non-TDP can *not* volunteer for alcohol testing.
4. **DESCRIPTION OF TESTS.** The following provides a description of each reason-for-test, along with any procedural differences that are required by statute for a TDP versus a non-TDP, or a drug test versus an alcohol test.
 - a. **Random testing.** Under this type of testing, all covered employees shall have an equal statistical chance of being selected for testing within a specified time frame. Random testing is unannounced and

could occur on any workday; random testing shall occur during the period the employee is considered to be performing his or her safety-sensitive functions. At the time of selection, the employee, as determined by his or her TDP, shall be subject to testing for drugs, or drugs and alcohol, as appropriate (see Appendix).

- b. **Pre-employment/pre-appointment testing.** All applicants for covered positions are subject to pre-employment/ pre-appointment testing for drugs, or drugs and alcohol, as denoted in the recruitment announcement. Any applicant having an alcohol concentration measuring 0.02 or greater on a confirmation test, shall be refused employment or appointment. All applicants with verified positive drug test results shall be refused employment. These applicants must reapply (i.e., carry out new application procedures) for subsequent recruitment announcements in order to be reconsidered.
- c. **Reasonable suspicion testing.** This type of testing, for drugs, or drugs and alcohol, as appropriate, may be required of any employee when management has reasonable suspicion to believe that the employee has violated the prohibitions of this order.
 - (1) **General.** This type of testing shall be conducted as soon as possible following the belief that an employee, subject to this order, has used illegal drugs or misused alcohol. This belief must be based on specific objective facts and reasonable inferences drawn by an appropriate management official from these facts in the light of experience. Reasonable suspicion does not require certainty; however, mere "hunches" are not sufficient to meet this standard. Reasonable suspicion testing shall only be ordered by a management official after receiving the concurrence of appropriate legal counsel in the OA.
 - (2) **Non-TDPs.** Reasonable suspicion testing may be required for an employee in a non-TDP when management believes there is evidence of on-duty drug use or on-duty drug impairment. Employees in a non-TDP shall *not* be tested for alcohol under this order.
 - (3) **Drugs.** The determination that reasonable suspicion exists to require an employee in a TDP to undergo a drug test shall be based upon:
 - (a) observable phenomena, such as direct observation of drug use and/or the physical symptoms of being under the influence of a drug; or,
 - (b) information provided either by reliable and credible sources or independently corroborated.

- (4) Alcohol. The determination that reasonable suspicion exists to require an appropriate TDP to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.
 - (a) Time limitation. If an alcohol test required under paragraph 4.c. of this chapter is not conducted within two hours following a determination of reasonable suspicion, the OA shall prepare, and maintain on file, a record stating the reasons the test was not promptly conducted. If the same alcohol test required is not conducted within eight hours following the determination of reasonable suspicion, the OA shall cease attempts to conduct the alcohol test and shall state in the record the reasons for not conducting the test.
 - (b) When a test is not possible. Notwithstanding the absence of a reasonable suspicion test required under paragraph 4.c. of this chapter, no TDP shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of, or impaired by, alcohol, as shown by behavioral, speech, and performance indicators. The TDP shall not be permitted to perform safety-sensitive duties again until the start of his or her next regularly scheduled shift, but not less than 8 hours following the determination that the employee has violated the prohibitions of this order.
 - (c) No discipline without a test. The OA shall not take disciplinary action against a covered employee, under this order, based solely on the employee's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an OA with authority independent of this order from taking any other appropriate action.
- (5) Documentation. Documentation shall be developed describing the circumstances which formed the basis that reasonable suspicion exists to authorize such testing. This documentation shall be maintained in accordance with Privacy Act requirements and applicable agency procedures.
- d. Post-accident testing. This type of testing may be required of any employee when management determines an accident has occurred

that qualifies according to the provisions set forth in the subparagraphs below.

- (1) **General.** This type of testing shall be conducted as soon as practicable following an accident or incident that involves one or more of the following covered events: a fatality; a serious injury; substantial damage¹ to aircraft or vehicles, and/or, substantial damage to other property. Only employees whose job performance at or about the time of an accident or incident provides reason to believe that such performance may have contributed to the accident or incident, or cannot be completely discounted as a contributing factor to the accident or incident, shall be determined to be subject to post-accident testing.
- (2) **Non-TDPs.** Post-accident testing for the use of illegal drugs can be required for an employee in a non-TDP. However, post-accident testing for alcohol shall *not* be required of a non-TDP under this order.
- (3) **Mandatory steps.** The determination to initiate post-accident testing shall be made in the following manner:
 - (a) The appropriate OA shall determine whether the accident meets the criteria listed above based on a review of all facts reasonably available.
 - (b) Following a determination that the accident qualifies for post-accident testing, the OA shall take all practical steps to identify employees that shall undergo post-accident testing.
 - (c) The process of determination, specified in subparagraph (a) and subparagraph (b) above, shall be completed, the proper notification shall be given to the employee, pursuant to paragraph 5 of this chapter, and testing

¹ Substantial damage to aircraft means damage or failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowlings, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades; and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wing tips are not considered substantial damage. Substantial damage to vehicles means damage which precludes departure of any vehicle from the scene of an accident in its usual manner in daylight after simple repairs. Substantial damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, windshield wipers that makes them inoperative.

must be accomplished as soon as practicable after the accident or incident.

- (4) Availability. An employee who is subject shall remain readily available for post-accident testing or may be deemed by the OA to have refused to submit to testing. Nothing in paragraph 4.d. of this chapter shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
 - (5) Drugs. Whenever feasible, a drug test must be completed within four hours after the accident or incident. If a required post-accident test for illegal drug use is not conducted within four hours following the accident, the OA shall submit a report to the DDO stating the reasons the test was not promptly conducted.
 - (6) Alcohol time limitation. If a required post-accident test for alcohol is not conducted within two hours following the accident, the OA shall submit a report to the DDO stating the reasons the test was not promptly conducted. If a required post-accident alcohol test is not conducted within eight hours following the accident, the OA shall cease attempts to conduct an alcohol test and shall submit the same report.
 - (7) National Transportation Safety Board. Whenever an accident or incident has occurred that is within the investigative jurisdiction of the National Transportation Safety Board (NTSB), and where management has determined to conduct drug or alcohol testing on an employee because his or her performance, at or about the time of the accident, provides reason to believe that such performance may have contributed to the circumstances of such accident or incident, the head of the OA must prepare a report. The report shall discuss the circumstances concerning the amount of time required to complete such testing. This report must be submitted to the Assistant Secretary for Administration within three work days after completion of the testing process.
- e. Return-to-duty/Follow-up testing. Any employee who has been determined to have violated the prohibitions of this order and who has accepted the opportunity to enter a substance abuse rehabilitation program shall be subject to unannounced follow-up

testing, and, additionally in TDP situations, a planned return-to-duty test.

- (1) **General.** Prior to an employee's return to the performance of a safety- or security-sensitive function, after engaging in conduct prohibited by this order, the employee shall undergo a return-to-duty test. A covered employee shall be subject to follow-up testing for one year after return to safety or security duties unless it is medically determined that a longer period is required. In cases where the MRO or SAP, based on clinical evidence or the employee's history, have reason to believe that the employee may be a polysubstance abuser, the return-to-duty and subsequent follow-up tests under this order shall, provided such testing is authorized for the particular TDP, include testing for both drugs and alcohol.
 - (2) **Non-TDP.** An employee in a non-TDP shall be subject to follow-up testing for one year after completion of the rehabilitation program. An employee in a non-TDP shall *not* be subject to alcohol testing during the follow-up period.
 - f. **Voluntary testing.** This type of testing is limited to drug testing, and is *only* provided to an employee in a non-TDP, at the employee's request. Such a request shall be submitted in writing to the DDO. The Act does not permit an employee in a non-TDP to be subjected (even through voluntary means) to alcohol testing.
5. **NOTIFICATION OF TESTING TO EMPLOYEES.** Employees subject to *follow-up testing, reasonable suspicion testing, and post-accident testing* shall receive written notice prior to testing that includes all of the following:
- a. the specific basis for the drug or alcohol test;
 - b. assurance that the quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs or alcohol misuse is highly reliable, and that test results shall be handled with maximum respect for individual privacy, consistent with safety, security, and confidentiality;
 - c. notice of the opportunity and procedures for submitting supplemental medical documentation that may support a legitimate use for a specific drug;
 - d. the consequences, including disciplinary action of a verified positive drug test result, a confirmed alcohol concentration measuring 0.04 or greater, a confirmed alcohol concentration measuring 0.02 or greater in follow-up testing, or a refusal to be tested; and,

- e. the availability of substance abuse counseling and referral services, including the name and telephone number of the local EAP manager or coordinator, along with instructions to specify the reason for this contact (e.g., reasonable suspicion drug test).

6. NOTIFICATION OF TESTING TO APPLICANTS. Employees or applicants subject to pre-employment or pre-appointment testing shall receive notice prior to testing. Vacancy announcements for TDPs shall contain the following:

- (1) that the applicant shall be tested for illegal drug use or alcohol misuse prior to appointment;
- (2) that the applicant shall be subject to random testing for drugs or alcohol, if appointed;
- (3) that applicants shall be provided an opportunity to submit medical documentation to the MRO or FMRO that may support a legitimate use for a specific drug; and,
- (4) that such information shall be reviewed only by the MRO or FMRO to determine whether the individual is using illegal drugs.

CHAPTER V

SPECIMEN COLLECTION AND DRUG TESTING

1. **POLICY.** All urine collections for drug testing (on employees and applicants other than those whose position requires a CDL) conducted by DOT under this order shall be done in accordance with the policies and procedures contained in the HHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs." All urine collections for drug testing on employees and applicants requiring CDLs, as required by 49 CFR Part 382, are regulated by 49 CFR Part 40. The split-specimen procedure contained in 49 CFR § 40.25 must be used for all drug testing of DOT employees and applicants for the test to be valid. (DOT incorporates by reference the procedures contained in the HHS Guidelines and 49 CFR § 40.25 and are considered part of this order.)
2. **RANGE OF DRUGS.** Tests shall be conducted for the illegal use of the following drugs considered to be a controlled substance (as defined by Section 802(6) of Title 21 U.S.C., and as changed, updated, and republished from time to time, as set forth in 21 CFR Part 1308) the possession of which is unlawful under Chapter 13 of that Title:
 - a. **Drugs covered.** The Department shall test for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) when conducting any drug test covered by this order.
 - b. **Inclusion of other drugs.** Before including any additional drugs (or classes of drugs), listed in Schedule I or II of the Controlled Substance Act or regulations at 21 CFR Part 1308, in its testing program, the Department shall petition the Secretary of HHS for written approval. When conducting reasonable suspicion, post-accident, or follow-up testing in accordance with this order, the Department is authorized to test for any drug identified as a Schedule I or II controlled substance.
3. **COLLECTION SITE.** Management shall designate the place where employees and applicants provide urine specimens to be analyzed for illegal drug use. The site shall possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation (shipping) of urine specimens to a drug testing laboratory. Employees shall be asked by an appropriate management official to report to a collection site.
 - a. **Site security.** It is the responsibility of the collector to assure that the collection site is secure during the time of each urine collection. In cases where a facility cannot be dedicated solely for the purpose of

drug testing, the portion of the facility being used for testing shall be secured during drug testing operations. DOT management shall assist the collector by restricting access to the site (e.g., rest room facility) while a collection is occurring. No unauthorized personnel shall be permitted in any part of the collection site where urine specimens are collected or stored.

4. **COLLECTION METHODOLOGY.** Each urine specimen shall be split into two specimen bottles (i.e., the primary specimen and the "split" specimen) using the split-specimen procedure. If the test of the primary specimen bottle is verified positive by the MRO or FMRO, he or she shall report the result to the agency. At that time, the donor may request, through the MRO or FMRO, that the split specimen bottle be tested in an HHS-certified laboratory for presence of the drug(s). Only the donor may make such a request. The MRO or FMRO shall honor such a request if it is made within 72 hours of the donor having received notice that his or her primary specimen tested positive and was verified. The result of the split-specimen test shall be transmitted to the MRO or FMRO without regard to the cutoff levels used to test the primary specimen bottle.
 - a. **Action on verified primary specimen.** Any action taken as a result of an MRO- or FMRO-verified positive drug test (e.g., removal from performing a safety- or security-sensitive function) may proceed whether the split specimen is or is not tested.
 - b. **Split specimen fails to reconfirm.** If the result of the test on the split specimen fails to reconfirm the verified positive result reported for the primary specimen, the MRO shall void the primary test result and the donor shall re-enter the group subject to random testing as if the test had not been conducted. The MRO shall notify the DDO and the OA when a split specimen has failed to reconfirm the result from the primary specimen; DOT shall contact the Substance Abuse and Mental Health Administration (SAMHSA), within HHS. SAMHSA shall investigate and attempt to determine the reason for the inconsistent results between the primary and the split specimens. HHS shall report its findings to DOT including recommendations and/or actions taken to prevent the reoccurrence of inconsistent results between the two specimens.
5. **CHAIN OF CUSTODY.** In order to assure that the urine samples taken from an individual are properly identified and not accidentally confused with any other samples, strict procedures shall be used when collecting and transferring the samples. The total of the procedures (i.e., the official transfers from the individual providing the urine to the drug

testing laboratory, including storage of confirmed positive samples at the laboratory) is known as the chain of custody.

- a. Collector control. While performing the collection part of the procedures, it is essential that the urine specimens and accompanying custody and control document be under the control of the collector. The collector shall not leave his or her work area, even momentarily, without securing the specimens and documentation, unless another collector remains in the work area. The specimens should be packaged for mailing before the collector leaves the site.
 - b. Standard Form. The Federal Drug Testing Custody and Control Form shall be utilized for maintaining control and accountability from point of collection to final disposition of specimens. These forms contain a pre-printed specimen identification number and unitary seals. It is the collector's responsibility to assure that this form is properly executed in accordance with HHS Guidelines and the DOT Guide. With each transfer of possession, the chain of custody area on the control form shall be signed and dated by the individual releasing the specimens and by the individual accepting the specimens, with the purpose for transferring possession noted. Should another collector handle the specimen within the sight of the donor, this does not constitute a change of possession. Every effort shall be made to minimize the number of persons handling the specimens. The collector shall assure that the control form is complete and shipped with each sealed container.
 - c. Shipping. The specimen containers shall be tightly capped, properly labeled and securely sealed to eliminate the possibility of tampering. The collector and the individual providing the specimens shall always have the specimens within their sight prior to them being sealed and labeled. The collector shall arrange to ship the specimens to the drug testing laboratory after collection of urine specimens is complete.
 - d. Balancing individual privacy and specimen control. Collection of urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Precautions shall be taken to assure that the urine specimens have not been adulterated or diluted during the collection procedure and that the information linking the urine bottles and the control forms can be identified as belonging to a given individual.
6. LABORATORY PROCEDURES. All laboratory testing and laboratory chain of custody procedures shall be done in strict accordance with the

HHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs."

- a. **Analysis of specimens.** The test for drugs shall consist of a screening test to detect the presence of drugs and a confirmation test (when the screening test is positive). The laboratory shall assure the chain of custody procedures are adhered to from the time of its receipt of the urine samples until testing is completed and the results reported. The same chain of custody procedures shall be adhered to during the storage period.
- b. **Reporting test results to the MRO.** Test results shall be reported to a designated MRO upon completion of the analysis of the primary specimen at the laboratory. The report shall contain the pre-printed specimen identification number, the identity of the drug testing laboratory, and results of the drug tests. All specimens with negative results on a screening test or negative on a confirmation test *shall be reported as negative*. Only specimens confirmed positive shall be reported as positive to the MRO. Results shall be transmitted to the MRO in a manner designed to assure confidentiality of the information. Results may not be provided verbally by telephone. A certified copy of the original control form, signed by the laboratory certifying official, shall be sent to the MRO. Copies of all analytical results shall be available from the laboratory when requested.
- c. **Primary specimen storage.** Negative specimens (in the form of the primary-specimen bottle and the split-specimen bottle) shall be discarded by the laboratory. Only remaining portions of urine specimens testing positive after both the screening and confirmation tests shall be considered positive for purposes of retaining the samples. Remaining portions of urine specimens which resulted in a verified positive result (both the primary-specimen bottle and the split-specimen bottle) shall be retained at the laboratory in a frozen state for at least 365 days, unless a split-specimen analysis is requested by the MRO. If the laboratory does not receive a request from the MRO or the DDO, to retain the samples before the initial 365-day period has expired, the samples may be discarded.
- d. **Split specimen storage.** If the individual requests that the MRO or FMRO have his or her split specimen analyzed by another HHS-certified laboratory (under contract to the Department), the split-specimen bottle shall be shipped to the "split laboratory." The split specimen shall be retained by that laboratory for the same 365-day period as the primary specimen, should the split specimen reconfirm the primary specimen. Within the 365-day period, the MRO or the DDO may request that each laboratory retain the samples for an

additional period of time. This assures that the urine samples (primary and split bottles) shall be available during any administrative or judicial proceeding. If the split specimen fails to reconfirm the primary specimen, both specimens shall be retained indefinitely for inspection by SAMHSA.

7. INVALID DETERMINATIONS. The MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that a drug test result is scientifically insufficient for further action and cancel the test result. A split specimen that failed to reconfirm its primary (counterpart) specimen shall be determined to be invalid.
8. DOT QUALITY ASSURANCE PROGRAM. In accordance with the HHS procedures, DOT shall submit samples to the laboratory for performance testing purposes. Blind samples shall be randomly intermingled with individual DOT-specimen samples and shipped to the laboratory. All samples shall be analyzed in the same manner to assure the accuracy of the laboratory testing program. The MRO shall report the results of any unsatisfactory performance to HHS.
9. TESTING COST FOR SPLIT SPECIMEN. The Department shall contract with an HHS-certified laboratory for the purpose of analyzing DOT split specimens. If an employee with a verified positive test result makes a timely request for split-specimen analysis, all associated costs shall be paid by the Department. If the employee requests that another HHS-certified laboratory, other than the laboratory under contract to DOT for the purposes of split-specimen analysis, be used, the employee shall pay all costs associated with shipping, analysis, reporting, and storage. Only the MRO or FMRO is authorized to order an analysis of the split specimen.

CHAPTER VI

ALCOHOL TESTING

1. POLICY. All alcohol testing (on employees and applicants other than those whose position requires a CDL) conducted by the Department shall be done in accordance with the policies and procedures contained in this order. (The DOT Guide provides detailed procedures that are consistent with 49 CFR Part 40, Subpart C that will be used for alcohol testing of DOT employees.) Employees and applicants for positions requiring CDLs are subject to the provisions of 49 CFR Part 382 with related alcohol testing being regulated by 49 CFR Part 40. DOT shall make exclusive use of evidential breath testing devices (EBTs), approved by and placed on the NHTSA "Conforming Products List of Evidential Breath Measurement Devices" (CPL), for performing alcohol testing under this order.
2. ALCOHOL TESTS. All alcohol tests shall be conducted to detect alcohol use (*i.e.*, the consumption of *any* beverage, mixture, or preparation, including *any* medication, containing alcohol).
3. ADDITIONAL EBT REQUIREMENTS. EBTs used for either a screening or a confirmation test shall also meet the following requirements:
 - a. be capable of providing, independently or by direct link to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test and of the operations specified in subparagraphs b. and c., of this paragraph;
 - b. be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the individual before each test and being printed out on each copy of the test result;
 - c. be capable of printing out, on each copy of the test result, the manufacturer's name for the device, the device's serial number, and the time and date of the test;
 - d. be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level;
 - e. be capable of testing an air blank prior to each collection of breath; and,
 - f. be capable of performing an external calibration check.

4. **QUALITY ASSURANCE PLANS FOR EBTs.** To be used in any alcohol test conducted under the DOT program, an EBT shall have a quality assurance plan (QAP) developed by the manufacturer. The plan shall specify all inspection, maintenance, and calibration requirements, procedures, and schedules for the device. The plan shall also specify the minimum intervals for performing external calibration checks (using only calibration devices on the NHTSA "Conforming Products List of Calibration Units for Breath Alcohol Tests"), as well as the tolerances within which the EBT is regarded to be in proper calibration. For a plan to be regarded as valid for purposes of this paragraph, the manufacturer shall have submitted the plan to NHTSA for review and have received NHTSA approval of the plan. In addition, the DDO shall:
 - a. assure that the alcohol testing contractor complies with the NHTSA-approved, QAP for each EBT used for alcohol testing subject to this order;
 - b. assure that the alcohol testing contractor takes any EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT set forth in the QAP. (The EBT shall not again be used for alcohol testing under the DOT program until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT.);
 - c. assure that the alcohol testing contractor maintains records of the external calibration checks of EBTs; and,
 - d. require that the EBT be securely stored when it is not being used at an alcohol testing site.
5. **ALCOHOL TESTING SITE.** Management shall designate the place where employees and applicants present themselves for the purpose of breath alcohol testing. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for testing. Employees shall be asked by an appropriate management official to report to a testing site.
 - a. **Privacy during testing.** The alcohol testing site must provide privacy protections for the individual to the extent practicable (e.g., visual and aural privacy shall be sufficient to prevent unauthorized persons from seeing or hearing test results).
 - b. **Site security.** It is the responsibility of the BAT to assure that the testing site is secure during the time of each alcohol test. In cases where a facility cannot be dedicated solely for the purpose of alcohol testing, the portion of the facility being used for testing shall be secured during alcohol testing operations. DOT management shall assist the BAT by restricting access to the site while testing is

occurring. No unauthorized personnel shall be permitted in any part of the testing site when testing is occurring or when the EBT remains unsecured.

- c. One test at a time. The BAT shall supervise only one individual's use of the EBT at a time.

6. BREATH ALCOHOL TECHNICIAN. While performing an alcohol test under this order it is essential that all test procedures and document preparation be under the control of the BAT. The BAT shall not leave the alcohol testing site while the testing of an individual is in progress.

- a. Training. The BAT shall be trained to operate and use the EBT and in the alcohol testing procedures of this order. Proficiency shall be demonstrated by successful completion of a course of instruction, which at a minimum, provides training in:

- (1) principles of EBT methodology, operation, and calibration checks;
- (2) fundamentals of breath analysis for alcohol content; and,
- (3) procedures required in this order for obtaining breath, and interpreting and recording EBT results.

- b. Approved courses. Only courses of instruction for operation of EBTs that are equivalent to the DOT model course, as determined by NHTSA, may be used to demonstrate BAT proficiency.

- c. Training documentation. The course of instruction shall include documentation that the BAT has demonstrated competence in the operation of the EBT(s) used. This documentation shall be kept by the alcohol testing contractor and submitted to the DDO for review and approval on request.

- d. Calibration training. Any BAT who shall perform an external calibration check of an EBT shall be trained to conduct a check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of the EBT.

- e. Recurring training. The BAT shall receive additional training, as needed, to assure proficiency, concerning new or additional devices or changes in technology that he or she shall use. As a minimum, recurring training must be given to all BATs at least yearly, with their respective training documentation updated.

7. BREATH TESTING PROCESS. The procedures contained in this order and the DOT Guide were designed to provide consideration for individual privacy in conjunction with a controlled breath alcohol testing

program. The procedures set out below apply to all five reasons for alcohol testing; *i.e.*, random, pre-employment/pre-appointment, reasonable suspicion, post-accident, and return-to-duty/follow-up. The testing process, from the time at which the individual is presented for testing through informing the SC or DPC of the results, shall be under the control of the BAT.

- a. Preparation for testing. To assure that an individual is properly identified for breath testing, and not accidentally confused with any other individual, positive identification shall be required. The individual is required to provide the BAT with a photo identification. Following identification, the BAT shall explain the testing procedure to the individual.
- b. Alcohol Form. The DOT Breath Alcohol Testing Form (included in 49 CFR Part 40) shall be utilized for all alcohol tests conducted by the Department. The BAT shall complete his or her section of the form. The individual shall complete and sign his or her section of the form, at the instruction of the BAT. The individual's signature signifies that he or she is present and is providing breath for testing and has noted the pre-assigned, sequential test number, indicated by the EBT.
- c. Refusal to test. Refusal by an individual to provide an adequate amount of breath or to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall immediately be terminated and the BAT shall notify the SC and the DPC of the termination.
- d. Required air blank. Before the screening test or confirmation test is conducted for each individual, the BAT shall assure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT, after allowing sufficient time for the EBT to clear residual alcohol, shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.
- e. Invalidating event. If an event occurs during the testing process which invalidates the test, the BAT shall note the problem in the remarks section. (See paragraph 10 of this chapter.) Both the individual and the BAT shall initial or sign the remark. In this case, the test is deemed invalid and the SC, or the DPC, and individual shall be so advised.
- f. Repeating any test sequence. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin again (*e.g.*, new screening or

confirmation test, as applicable), using a new alcohol testing form with a new sequential test number. If a test cannot begin again due to the unavailability of an EBT, the test shall be declared invalid, and the testing process shall stop.

- g. **Screening test.** Procedures for the administration of the screening test are provided in detail in the DOT Guide. Immediately following the screening test, the BAT shall show the test results to the individual, and the paperwork shall be completed, as appropriate.
 - (1) **Result less than 0.02.** If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is authorized. The BAT shall then report the results of the passed alcohol test to the SC or DPC in a confidential manner.
 - (2) **Result of 0.02 or greater.** If the result of the screening test is equal to 0.02 or greater, a confirmation test shall be performed in accordance with this order and the DOT Guide.
 - (3) **Declining to sign form.** If the employee declines to sign the Breath Alcohol Testing Form, it shall *not* be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the remarks section of the form.
- h. **Confirmation Test.** The confirmation test shall be a second test and may be carried out on the same EBT as the screening test. Confirmation test procedures are provided in detail in the DOT Guide.
 - (1) **Mandatory waiting period.** The BAT shall instruct the individual not to eat, drink, smoke, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes long. The BAT shall explain to the individual the reason for this requirement (*i.e.*, to prevent any accumulation of mouth alcohol from leading to an artificially high reading) and the fact that it is for the individual's benefit.
 - (2) **Proceeding with test.** The BAT shall also explain that the test shall be conducted at the end of the waiting period, even if the individual has disregarded the instruction. If the BAT becomes aware that the individual does not comply with the waiting-period instructions, the BAT shall so note in the remarks section of the form.
 - (3) **Final result.** Immediately following the confirmation test, the BAT shall show the test results to the individual, and the

paperwork shall be completed, as appropriate. In the event that the screening and confirmation test results are not identical, the confirmation result shall be the final result upon which any disciplinary action shall be based.

- (a) Result less than 0.02. If the result of the confirmation test is an alcohol concentration of less than 0.02, no further testing is authorized. The BAT shall then report the results of the passed alcohol test to the SC or DPC in a confidential manner.
- (b) Result of 0.02 or greater. If the result of the confirmation test results is equal to 0.02 or greater, the BAT shall report to the SC or DPC, in a confidential manner, that the individual has not passed the alcohol test.
- (4) Declining to sign form. If the employee declines to sign the Breath Alcohol Testing Form, it shall *not* be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the remarks section of the form.

8. INABILITY TO PROVIDE AN ADEQUATE BREATH FOR TESTING.

If an individual is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the following procedures shall apply.

- a. Required attempt. The BAT shall again instruct the individual to attempt to provide an adequate amount of breath. If the individual refuses to make the attempt, the BAT shall immediately inform the SC or the DPC. If the individual attempts and fails to provide an adequate amount of breath, the BAT shall so note in the remarks section of the alcohol testing form and inform the SC or the DPC.
- b. Medical evaluation. The employee's supervisor shall direct the employee to contact an FAA Flight Surgeon, as soon as practicable after the attempted provision of breath, for an evaluation concerning the employee's medical ability to provide an adequate amount of breath. The employee shall make available to the Flight Surgeon all relevant medical history and records. For non-FAA employees an FAA Flight Surgeon shall be assigned this responsibility.
- c. Determination. If the Flight Surgeon determines, in his or her medical judgment, that a medical condition has, or with a high degree of probability, could have precluded the individual from providing an adequate amount of breath, the individual's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. If the Flight Surgeon determines there is no medical explanation which could satisfactorily explain the inability of the

individual to provide an adequate amount of breath, the Flight Surgeon shall provide a written statement of this determination to the appropriate management officials.

9. **ALCOHOL CONCENTRATIONS OF 0.02 OR GREATER.** If the BAT reports test results for an employee with an alcohol concentration of 0.02 or greater on a confirmation test, the SC or DPC shall immediately contact the employee's supervisor. The supervisor must take immediate action to assure that the employee in question does not perform, or ceases to perform, safety-sensitive functions.
10. **INVALID ALCOHOL TESTS.** If an alcohol test is declared invalid, the test shall be treated as if it (the test) had never been conducted. A breath alcohol test shall be invalid under the following circumstances:
 - a. **EBT out of tolerance.** The next external calibration of an EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid.
 - b. **Less than 15-minute wait.** The BAT does not observe the 15-minute waiting period prior to a confirmation test.
 - c. **Air blank results not 0.00.** The BAT does not perform an air blank before the screening or confirmation test which results in a reading of 0.00.
 - d. **No BAT certification signature or notes.** The BAT does not sign the form as required, or the BAT fails to note on the form that the individual has failed or refused to sign the form as required.
 - e. **Disparity between displayed and printed numbers.** An EBT fails to print a confirmation test result, or the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

CHAPTER VII

REHABILITATION

1. POLICY. The Department shall establish and maintain a rehabilitation program for the opportunity for treatment of its employees. In particular, the rehabilitation program shall focus on employees within the Department whose duties include safety- or security-sensitive functions, and who are in need of assistance in resolving problems with the use of drugs and alcohol. The rehabilitation program shall be managed by the EAP managers and coordinators within each OA.
2. OPPORTUNITY FOR REHABILITATION. When it has been determined, for the first time, that an employee has violated a prohibition of off-duty illegal drug use or off-duty alcohol misuse, covered by this order or by 49 CFR Part 382, it is the responsibility of management to direct the employee to the EAP. The employee shall be given an opportunity, following initial counseling, to enter a substance abuse rehabilitation program as may be deemed appropriate, by the EAP manager or coordinator with agreement of the MRO, FMRO, or SAP, under the circumstances.
 - a. Testing conditions. Upon successful completion of the initial phase of the rehabilitation program, a covered employee shall be subject to a scheduled return-to-duty test and unannounced follow-up testing. An employee in a non-TDP shall only be subject to unannounced follow-up drug testing.
 - (1) Return-to-duty testing. Before a covered employee returns to duty requiring the performance of a safety- or security-sensitive function, the employee shall undergo a return-to-duty test. Return-to-duty drug test results must be negative; return-to-duty alcohol tests must result in a confirmed alcohol concentration measuring less than 0.02. The MRO, FMRO, or SAP is responsible for ordering all return-to-duty tests, as appropriate.
 - (2) Follow-up testing. Follow-up testing for a covered employee shall last for at least one year after the employee successfully passes the return-to-duty test, but may be extended longer if deemed necessary by the MRO, FMRO, or SAP. An employee in a non-TDP shall be subject to follow-up testing for one year. During the first 12 months of follow-up testing for alcohol, a covered employee must complete to a minimum of 6 follow-up tests. This same minimum may be applied to follow-up testing for drugs. Follow-up drug test results must be negative;

follow-up alcohol tests must result in a confirmed alcohol concentration measuring less than 0.02. All recommended plans for follow-up testing of employees shall be reviewed and approved by the MRO, FMRO, or SAP, as appropriate. The DDO is responsible for implementing the individual testing plan for all follow-up tests.

- b. Successful completion. An employee who successfully completes his or her rehabilitation program shall not be subject to disciplinary action as a result of the first determination of either off-duty illegal drug use or off-duty alcohol misuse. If an employee refuses to enter a rehabilitation program or fails to successfully complete a rehabilitation program, the provisions of Chapter IX (Disciplinary Action) shall be used for guidance.

- 3. EAP RESPONSIBILITIES. EAP managers or coordinators must maintain or have readily available a current list of substance abuse rehabilitation organizations which provide counseling and rehabilitative programs for substance abuse, including the use of illegal drugs and alcohol. The following information must be included on each rehabilitation organization: (a) name, address, and telephone number; (b) the type of services provided; (c) hours of operation, including emergency hours; (d) name and telephone number of a contact person to provide information regarding items such as fee structure and insurance coverage; (e) client specialization; and (f) other pertinent information (e.g., practical or compatibility issues with relevant Government insurance programs).

- a. Assessing rehabilitative services. EAP personnel shall periodically research and assess rehabilitative organizations to:
 - (1) ascertain the experience, certification, and educational level of staff;
 - (2) verify licensing and accreditation of organizations; and
 - (3) ascertain each organization's policy concerning progress reports on clients, return-to-duty, and post-treatment follow-up.
- b. Assessment and referrals. An employee directed to an EAP shall receive short-term diagnostic counseling and, as appropriate, referral to a substance abuse rehabilitation program. Information shall be provided to management in accordance with the requirements of Chapter VIII (Confidentiality). In the case of an employee who has failed to pass an alcohol test conducted under the Department's program, the EAP manager or coordinator shall assure

that all evaluation and treatment is performed in accordance with SAP requirements.

- (1) Rehabilitation selection. The determination of the type of rehabilitation assistance required by an employee shall be made by the EAP manager or coordinator, in consultation with the MRO, FMRO, or SAP, regarding the treatment and availability of services in the rehabilitation organization tentatively selected. As a minimum, the employee shall be assessed by a substance abuse professional who shall submit a written report with recommendations to the EAP manager or coordinator.
4. COST. The services provided under existing EAPs are provided at no cost to the employee. Cost for further diagnostic or rehabilitative services, or treatment is the responsibility of the employee.
5. SELF-REFERRAL. An employee who voluntarily identifies himself or herself as someone who uses illegal drugs or misuses alcohol, prior to being identified through other means, shall not be identified to the agency or the respective OA, on the first occurrence of such self-referral, for the purposes of taking any disciplinary action.
 - a. Conditions. An employee who voluntarily self-refers for illegal drug use or alcohol misuse shall not be subject to disciplinary action (based only on substance abuse), return-to-duty testing, or a follow-up testing period if he or she meets all of the following criteria:
 - (1) obtains counseling through an approved employee assistance program and completes EAP-recommended rehabilitation; and,
 - (2) thereafter refrains from any further instance of use of illegal drugs or alcohol misuse in accordance with the policy of this order.
 - b. Monitoring. The OA, at its discretion, may develop a policy to require return-to-duty and follow-up drug or drug and alcohol testing of employees returning to security- or safety-sensitive duties. Any proposed policy must be consistent with the intent and purpose of this order and any testing must be accomplished under the program established by this order. Proposed policies must be submitted for review and approval by the Assistant Secretary for Administration prior to implementation.
 - c. Exception. If the employee makes an attempt to self-refer at the time when he or she is called to take a drug or alcohol test, conducted under the Department's testing program, the information

provided by the employee shall be used by the appropriate OA officials to make a determination of illegal drug use or alcohol misuse against that employee.

6. REASSIGNMENT TO OTHER DUTIES. Covered employees may be assigned non-safety- or non-security-sensitive duties, if such duties are available, when they are identified as having used illegal drugs or misused alcohol. An employee assigned to non-safety- or non-security-sensitive duties may be returned to safety- or security-sensitive duties when an appropriate DOT authority determines such action would not pose a danger to public health or safety or the national security.

CHAPTER VIII

CONFIDENTIALITY

1. **POLICY.** DOT's drug testing laboratory, split-specimen testing laboratory, urine collection contractor, alcohol testing contractor, FAA Aviation Medical Examiners, EAP and SAP personnel, and DOT employees involved in any aspect of the departmental drug and alcohol testing program are required to maintain strict standards of confidentiality in carrying out responsibilities. This includes:
 - a. maintaining maximum respect for individual privacy consistent with safety and security issues;
 - b. handling of test results; and,
 - c. controlling all contacts with medical and health personnel, counselors, DPCs, EAP managers and coordinators, and SAP personnel.
2. **PROVISIONS TO PROTECT CONFIDENTIALITY.** Test results shall be disclosed to the employee and a limited number of officials within the agency. The following provisions are designed to protect the confidentiality of negative, confirmed and verified positive drug test results, measured alcohol concentrations, and not-ready-for-duty determinations, pre-duty or on-duty use records, and related medical and rehabilitation records.
 - a. **Notification to employees.** Employees shall receive written notification of drug and alcohol test results.
 - b. **Authorized disclosure.** The results of drug and alcohol tests of a DOT employee shall not be disclosed without the prior written consent of the employee, unless the disclosure would be:
 - (1) to the employee's MRO (applies *only to drug test results*);
 - (2) to the administrator of any EAP in which the employee is receiving counseling or treatment or is otherwise participating;
 - (3) to the supervisory or management official having authority to take adverse personnel action against such employee; and/or,
 - (4) pursuant to an order of a court of competent jurisdiction where required by the United States to defend an adverse personnel action.
 - c. **Access by NTSB.** The Department has a responsibility to the NTSB (under the Independent Safety Board Act Amendments of 1990) to report the results of a post-accident or reasonable suspicion

confirmed positive drug test, if a written request to the Secretary for such information is made. The request for information must be made in the course of investigating an accident or incident that is within the jurisdiction of the NTSB. Subsequent to such a request, the NTSB shall be furnished any report of a confirmed positive test result for such tests(s) verified by the MRO or a FMRO and any underlying laboratory records documenting the confirmed positive test result. Until statutes are developed specifically for the release and reporting of alcohol test results, alcohol test results shall be disclosed to the NTSB in the same manner as drug test results. The Office of the Assistant Secretary for Administration shall be responsible for complying with any request from the NTSB for this information.

- d. Notification to management. Notification concerning drug and alcohol test results shall ordinarily be made by the DPC to appropriate management officials, EAP manager or coordinator, and the servicing personnel office (in the case of applicants).
- e. Employee Treatment Records. Records of the identity, diagnosis, prognosis, or treatment of any employee who enters a substance abuse rehabilitation program, which are maintained in connection with this program, are patient records that must be kept confidential and shall be disclosed only by consent of the patient or under limited circumstances and specific purposes established by 42 CFR Section 2.1, *et seq.*
 - (1) Treatment records for illegal drug use and alcohol abuse may be disclosed without the consent of the employee only:
 - (a) to medical personnel to the extent necessary to meet a genuine medical emergency, or for assessment for appropriate treatment;
 - (b) to qualified personnel for conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify any individual employee in any report of such research, audit, or evaluation, or otherwise disclose employee identities in any manner; and/or,
 - (c) when authorized by an appropriate court order granted after application showing good cause.
 - (2) Any other disclosure may be made only with the written consent of the employee. Disclosure without such consent is strictly prohibited. Such consensual disclosure may be made for verification of treatment or a general evaluation of treatment progress.

3. **RECORDS CONCERNING EBTs AND BATs.** The breath testing contractor shall maintain records of the inspection, maintenance, and calibration of EBTs, compliance with the manufacturer's QAP, and records of the training and proficiency of BATs.
- a. **Three-year records.** The following records shall be maintained for three years:
- (1) records of the inspection and maintenance of each EBT used in employee or applicant testing;
 - (2) documentation of the contractor's compliance with the QAP of the manufacturer of each EBT it uses for alcohol testing of DOT employees and applicants; and,
 - (3) records of the training and proficiency testing of each BAT used in testing of DOT employees and applicants.
- b. **Five-year records.** Records pertaining to the calibration of each EBT used in alcohol testing, including records of the results of external calibration checks, shall be maintained for five years.
- c. **Employee access.** Records maintained under this provision shall be disclosed upon the request of any DOT employee or applicant who has been tested to the extent any such record relates to a test which the employee or applicant has taken.

CHAPTER IX

DISCIPLINARY ACTION

1. **VIOLATION OF PROHIBITED CONDUCT.** The Department is committed to its policy of maintaining a drug and alcohol-free workplace. Disciplinary action for prohibited drug- and alcohol-related misconduct shall be taken under each of the circumstances described below.
 - a. **On-duty use or possession of illegal drugs.** The agency shall initiate action to *remove* a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, in the case of on-duty use or possession of illegal drugs.
 - b. **Drug trafficking.** The agency shall initiate action to *remove* a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, where it has been determined that the employee has engaged in illegal drug trafficking; e.g., sale, manufacture, growth, distribution, or transportation.
 - c. **On-duty use of alcohol.** The agency shall initiate action to *remove* a covered employee from Federal service, or may initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, in the case of any on-duty use of alcohol.
 - d. **Off-duty use of illegal drugs.** The agency shall initiate action to *remove* a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, in the case of off-duty use of illegal drugs as determined by a verified positive drug-test conducted under the Department's program. On the first determination of this violation, the removal action or other discipline, in case of an employee in a non-TDP, shall be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter VII, Rehabilitation).
 - e. **Alcohol misuse concentration.** The agency shall initiate action to *remove* a covered employee from Federal service in the case of off-duty misuse of alcohol as measured by an alcohol concentration of 0.04 or greater on a confirmation test. On the first determination of this violation, the removal action shall be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter VII, Rehabilitation).

- f. Abstinence period failures. The agency shall initiate action to *remove* a covered employee from Federal service who fails to maintain abstinence from alcohol during a required period. An abstinence period shall include either the pre-duty or post-accident period of restriction for alcohol use. On the first determination of this violation, the removal action shall be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter VII, Rehabilitation).
 - g. Repeated misconduct. The agency shall initiate action to *remove* an employee from Federal service who has a *second* violation of conduct prohibited by this order. After a first determination of an off-duty drug or alcohol violation, a verified positive drug-test result, or a confirmed alcohol concentration of 0.04 or greater, or a failure to maintain a required abstinence shall qualify as repeated misconduct.
 - h. Refusal to comply with procedures during collection or testing. The agency shall initiate action to *remove* a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, who fails to report to the designated testing site, refuses to provide a urine specimen or an adequate amount of breath for testing, attempts to alter, adulterate, or substitute the specimen provided, or engages in conduct that clearly obstructs the collection or testing process.
 - i. Refusal to enter or successfully complete a substance abuse rehabilitation program. The agency shall initiate action to *remove* a covered employee, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, who refuses to enter or fails to successfully complete counseling or a rehabilitation program under the EAP. A determination that the employee has failed rehabilitation, may be made on the basis of off-duty drug or alcohol-related misconduct, or the employee not adhering to the terms of the rehabilitation plan.
2. OTHER ALCOHOL-RELATED CONDUCT. The Department must depend on its workforce to be able and available when scheduled for duty. Testing not-ready-for-duty is inconsistent with this requirement. Disciplinary action for other alcohol-related conduct (*i.e.*, testing not-ready-for-duty) is set forth below and shall be taken under the described circumstances.
- a. Not ready for duty. A covered employee subject to alcohol testing must be removed from safety-sensitive functions if the result of any agency alcohol test produces an alcohol concentration equal to or greater than 0.02 but less than 0.04 on a confirmation test. Any employee testing in a not-ready-for-duty status shall not perform his

or her safety-sensitive functions for the remainder of the shift. This employee shall not return to his or her safety-sensitive functions until the start of his or her next regularly scheduled shift, provided that shift occurs no sooner than eight hours after the alcohol test was conducted.

- (1) First occurrence. An employee who engages in this misconduct shall be placed in non-safety-sensitive work for the remainder of the shift. In addition, the employee shall be issued a letter of warning which includes an explanation of the consequences of any subsequent determination of a not-ready-for-duty status.
 - (2) Subsequent occurrence. An employee who engages in this misconduct (*i.e.*, repeated occurrences of a not-ready-for-duty status) shall be dismissed from the worksite and shall be charged Absent Without Leave (AWOL) for the remainder of the shift, since the employee, although physically present at the worksite, is not able and available for his or her assigned duties. Appropriate disciplinary action shall be initiated as necessary.
3. DISCIPLINARY PROCEDURES. Any disciplinary action under this chapter shall be taken in accordance with law and regulation.

CATEGORIZATION OF EMPLOYEES FOR TESTING

Testing Designated Positions (TDPs). - Safety/Security Critical - These are positions characterized as critical safety or security responsibilities, related to the mission of the Department. The job functions associated with these positions have a direct and immediate impact on public health and safety, the protection of life and property, law enforcement, or national security. These positions require the highest degree of trust and confidence. Positions occupied by individuals which require the possession of a security clearance of "TOP-SECRET" or higher are included as TDPs regardless of their organization or occupation.

Drug-only TDPs. E.O. 12564 requires drug testing of safety- and security-sensitive positions in DOT.

Drug and alcohol TDPs. The Act mandates drug and alcohol testing for FAA employees whose duties include responsibility for safety-sensitive functions and for any other DOT employee whose position requires a CDL. The Act does not mandate drug and alcohol testing for other safety-sensitive employees outside FAA, or for any security-sensitive employees within DOT. Since the requirement for a CDL is not specific to a particular occupational series, this appendix does not identify every position in DOT which requires this licensure. The Operating Administrations must maintain the CDL employee listing and coordinate updates with the DDO.

Non-TDPs. All positions that are not designated as TDPs are designated as non-TDPs

Position Coverage By Occupation. The categorization of all other DOT positions is accomplished within the context of their departmental element and their job duties within that organization. To assure overall consistency, category determinations for including or excluding positions as either a TDP or a non-TDP will be made by the Assistant Secretary for Administration in consultation with the departmental organization. References to a given job, occupational series or family include all supervisors and employees in the occupation regardless of pay plan, unless otherwise noted.

Justification Statements For TDPs. With the exception of positions requiring a CDL, each determination by the departmental element to include a particular job occupation as a TDP shall be supported by a justification statement clearly describing why the job is safety/security critical and specifying the adverse consequences that would likely occur if an incumbent in that position were to use illegal drugs, or where appropriate, misuse alcohol. A current justification statement for each job or occupation included

as a TDP shall remain on file with the Assistant Secretary for Administration, who reserves the right to review each justification statement to assure overall consistency with the DOT drug program and among varying occupations throughout the Department and make appropriate recommendations.

TDPs BY OPERATING ADMINISTRATION

Office of the Secretary--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Motor Vehicle Dispatcher	GS-2151	x	x ^a
Motor Vehicle Operators	WG-5703	x	x ^a

- a** Positions requiring CDL's are subject to both drug and alcohol testing.

Office of Inspector General--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Criminal Investigators	GS-1811	x	
Motor Vehicle Operators	WG-5703	x	x ^a

- a** Positions requiring CDL's are subject to both drug and alcohol testing.

Federal Highway Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Highway Safety Specialists	GS-2125 ^b	x	
Motor Carrier Safety Specialists	GS-2123 ^b	x	
Transportation Equipment Operation Family	WG-57XX	x	x ^a

- a** Positions requiring CDL's are subject to both drug and alcohol testing.
b Includes only those GS-2123 and GS-2125 positions with day-to-day responsibilities for field operations of inspection and enforcement.

United States Coast Guard--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Firefighters	GS-0081	x	x ^a
Medical Officer	GS-0602 ^b	x	
Nurses	GS-0610	x	
Criminal Investigators	GS-1811	x	
Vessel Traffic Controllers	GS-2150	x	
Marine Traffic Controllers (Pilot)	GS-2150	x	
Electronics Mechanics	WG-2604	x	
Aircraft Electricians	WG-2892 ^c	x	
Instrument Mechanics	WG-3359 ^c	x	
Metals Inspectors	WG-3801 ^c	x	
Sheet Metal Mechanics (Aircraft)	WG-3806 ^c	x	
Sheet Metal Workers	WG-3806 ^c	x	
Shipwright Foremen	WS-5220	x	
Transportation Equipment Operation Family	WG-57XX	x	x ^a
Aircraft Oxygen Equipment Mechanics	WG-8201 ^c	x	
Aircraft Pneudraulic Systems Mechanics	WG-8268 ^c	x	
Aircraft Engine Mechanics	WG-8602 ^c	x	
Aircraft Mechanical Parts Repairers	WG-8840 ^c	x	
Aircraft Mechanics	WG-8852 ^c	x	
Deckhands	WM-9901	x	
Master Pilots, Ferryboat	WM-9902	x	
Chiefs, Engineers & Ferryboat	WM-9931	x	
Oilers, Ferryboat & Diesel	WM-9961	x	

Personnel with "competent person" collateral duties at the Coast Guard Yard, Curtis Bay, Maryland, are included as a TDP. These individuals have responsibility for certifying areas as "safe" for performing work.

- a** Positions requiring CDL's are subject to both drug and alcohol testing.
- b** Coast Guard Training Center, Petaluma, CA
- c** Only those individuals located at the Aircraft Repair and Supply Center.

Federal Aviation Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Computer Operators (in Airway Facilities in ARTCCs)	GS-332		x
Engineering Technicians (in Airway Facilities)	GS-802 ^b		x
Electronics/Systems Engineers (in Airway Facilities)	GS-855 ^c		x
Electronics Technicians (in Aviation Standards National Field Office)	GS-856 ^c		x
Electronics Technicians (in Airway Facilities)	GS-856 ^d		x
Civil Aviation Security Specialists	GS-1801 ^e		x
Criminal Investigators	GS-1811 ^e		x
Aviation Safety Inspectors	GS-1825 ^e		x
Air Traffic Control Specialists	GS-2152 ^e		x
Air Traffic Assistants	GS-2154 ^f		x
Inspection/Flight Test Pilots	GS-2181		x
Maintenance Mechanics (in Airway Facilities)	WG-4749 ^g		x
Transportation Equipment Operation Family	WG-57XX	x	x ^a
Aircraft Mechanics	WG-8852		x

- a** Positions requiring CDL's are subject to both drug and alcohol testing.
- b** Except GS-802 employees assigned to Field Maintenance Party staff and Facilities and Equipment staff.
- c** Only those individuals assigned certification responsibilities and their first level supervisors.
- d** Except those GS-856 employees assigned to the Facilities and Equipment staff and regional office staff.
- e** Only GS-1801 (including Federal Air Marshals), GS-1801, GS-1811, GS-1825, and GS-2152 employees who are required to take periodic physical exams to retain medical clearances.
- f** Except Air Traffic Assistant (Simulation), GS-2154, positions at the Technical Center, Atlantic City, NJ.
- g** Except those individuals who are not targeted for safety related positions (will never certify equipment) and/or are assigned to Field Maintenance Party staff positions.

Federal Railroad Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Industrial Hygienists (Headquarters)	GS-690	x	
General Engineers (Field & Headquarters)	GS-801	x	
Civil Engineers (Field & Headquarters)	GS-810 ^a	x	
Safety Engineers (Headquarters)	GS-803	x	
Mechanical Engineers (Headquarters)	GS-830	x	
Electrical Engineers (Headquarters)	GS-855	x	
Chemical Engineers (Headquarters)	GS-893	x	
Transportation Specialists (Headquarters)	GS-2101 ^b	x	
Cross & Trespasser Regional Manager	GS-2101	x	
Railroad Safety Series (Field & Headquarters)	GS-2121 ^a	x	

- ^a For field positions, includes Railroad Safety Inspectors and Specialists, Supervisory Inspectors and Specialists, managerial level Railroad Safety Specialists, and Civil Engineers actively engaged in the inspection of railroad equipment and services.
- ^b Includes only those positions which involve two or more specialized transportation functions actively engaged in the development, implementation, and monitoring of railroad safety programs.

National Highway Traffic Safety Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Auto Enforcement Investigators	GS-1801	x	
Criminal Investigators	GS-1811	x	
Motor Vehicle Operators	WG-5703	x	x ^a

- ^a Positions requiring CDL's are subject to both drug and alcohol testing.

Federal Aviation Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Computer Operators (in Airway Facilities in ARTCCs)	GS-332		x
Engineering Technicians (in Airway Facilities)	GS-802 ^b		x
Electronics/Systems Engineers (in Airway Facilities)	GS-855 ^c		x
Electronics Technicians (in Aviation Standards National Field Office)	GS-856 ^c		x
Electronics Technicians (in Airway Facilities)	GS-856 ^d		x
Civil Aviation Security Specialists	GS-1801 ^e		x
Criminal Investigators	GS-1811 ^e		x
Aviation Safety Inspectors	GS-1825 ^e		x
Airway Transportation System Specialists (in Airway Facilities)	GS-2101		x
Air Traffic Control Specialists	GS-2152 ^e		x
Air Traffic Assistants	GS-2154 ^f		x
Inspection/Flight Test Pilots	GS-2181		x
Maintenance Mechanics (in Airway Facilities)	WG-4749 ^g		x
Transportation Equipment Operation Family	WG-57XX	x	x ^a
Aircraft Mechanics	WG-8852		x

- ^a Positions requiring CDL's are subject to both drug and alcohol testing.
- ^b Except GS-802 employees assigned to Field Maintenance Party staff and Facilities and Equipment staff.
- ^c Only those individuals assigned certification responsibilities and their first level supervisors.
- ^d Except those GS-856 employees assigned to the Facilities and Equipment staff and regional office staff.
- ^e Only GS-1801 (including Federal Air Marshals), GS-1801, GS-1811, GS-1825, and GS-2152 employees who are required to take periodic physical exams to retain medical clearances.
- ^f Except Air Traffic Assistant (Simulation), GS-2154, positions at the Technical Center, Atlantic City, NJ.
- ^g Except those individuals who are not targeted for safety related positions (will never certify equipment) and/or are assigned to Field Maintenance Party staff positions.

Federal Railroad Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Industrial Hygienists (Headquarters)	GS-690	x	
General Engineers (Field & Headquarters)	GS-801	x	
Civil Engineers (Field & Headquarters)	GS-810 ^a	x	
Safety Engineers (Headquarters)	GS-803	x	
Mechanical Engineers (Headquarters)	GS-830	x	
Electrical Engineers (Headquarters)	GS-855	x	
Chemical Engineers (Headquarters)	GS-893	x	
Transportation Specialists (Headquarters)	GS-2101 ^b	x	
Cross & Trespasser Regional Manager	GS-2101	x	
Railroad Safety Series (Field & Headquarters)	GS-2121 ^a	x	

- ^a For field positions, includes Railroad Safety Inspectors and Specialists, Supervisory Inspectors and Specialists, managerial level Railroad Safety Specialists, and Civil Engineers actively engaged in the inspection of railroad equipment and services.
- ^b Includes only those positions which involve two or more specialized transportation functions actively engaged in the development, implementation, and monitoring of railroad safety programs.

National Highway Traffic Safety Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Auto Enforcement Investigators	GS-1801	x	
Criminal Investigators	GS-1811	x	
Motor Vehicle Operators	WG-5703	x	x ^a

- ^a Positions requiring CDL's are subject to both drug and alcohol testing.

Federal Transit Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Motor Vehicle Operators	WG-5703	x	xa

- a Positions requiring CDL's are subject to both drug and alcohol testing.

Saint Lawrence Seaway Development Corporation-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Lock and Dam Operators	WG-5426 ^b	x	
Vessel Traffic Controllers	GS-2150 ^b	x	
Transportation Equipment Operation Family	WG-57XX ^b	x	xa

- a Positions requiring CDL's are subject to both drug and alcohol testing.
b Employees in other series who periodically perform the duties of Vessel Traffic Controllers, Lock and Dam Operators and Heavy Transportation or Marine Equipment Operators are also included as TDPs.

Maritime Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Engineers (Watchstander)	WM-5352	x	
Marine General Utility Maintenance Mechanics (Deck/Engine)	WM-5352	x	
Transportation Equipment Operation Family	WG-57XX	x	xa

- a Positions requiring CDL's are subject to both drug and alcohol testing.

Research and Special Programs Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
General Engineers (Pipeline)	GS-801 ^b	x	
Engineering Technicians	GS-802 ^b	x	
Petroleum Engineers	GS-881 ^b	x	
Transportation Specialists	GS-2101 ^b	x	
Motor Vehicle Operators	WG-5703 ^b	x	x ^a

^a Positions requiring CDL's are subject to both drug and alcohol testing.

^b Includes only those GS-801, GS-802, GS-881, GS-2101, and WG-5703 positions with responsibilities for field operations of inspection and enforcement.
